ORIGINAL

No. 89-535

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

LOUIS W. SULLIVAN, Secretary
U.S. Department of Health and Human Services,

Petitioner,

v.

ELIZABETH STROOP, et al.,

Respondents

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SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in determining eligibility and assistance levels under the Aid to Families with Dependent Children (AFDC) program, the Secretary's refusal to disregard the first $50 per month of Title II Social Security payments received by children residing in AFDC households, while applying such a disregard to other forms of child support, creates an irrational distinction that violates the Social Security Act of 42 U.S.C. Section 602(a)(8) and the constitutional guarantee of Equal Protection under the laws.

TABLE OF CONTENTS

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

ARGUMENT

A. TITLE II PAYMENTS ARE SYNONYMOUS WITH THE TERM "CHILD SUPPORT" AS THAT TERM IS COMMONLY USED 7

B. THE LEGISLATIVE HISTORY OF THE 1974 DISREGARD PROVISION HAS NO RELEVANCE TO THE INTERPRETATION OF THE 1984 DEFRA STATUTE 9

C. THE SECRETARY'S INTERPRETATIONS OF THE DISREGARD STATUTE ARE ARBITRARY, CONTRADICTORY AND IRRATIONAL AND ARE NOT ENTITLED TO DEFERENCE 12

D. THE DECISIONS OF ONE FEDERAL APPELLATE COURT AND ONE INTERMEDIATE STATE APPELLATE COURT WHICH ARE NOT CONSISTENT WITH THE FOURTH CIRCUIT DECISION AND ARE CLEARLY CONTRARY TO THE DEVELOPING CASE LAW DO NOT JUSTIFY GRANTING A WRIT 14

E. THE NEGLIGIBLE IMPACT THIS CASE WILL HAVE UPON THE COST AND ADMINISTRATION OF THE AFDC PROGRAM DOES NOT JUSTIFY THE GRANTING OF A WRIT 16

CONCLUSION 18

AFFIDAVIT OF FILING AND SERVICE 19

RESPONDENTS' APPENDIX 21

TABLE OF AUTHORITIES

Cases

Adamo Wrecking Co. v. U.S., 434 U.S. 275 (1978) 12

Andler v. Andler, 217 Kan. 539, 538 P.2d 649 (1975) 9

Baylor v. New Jersey Dept. of Soc. Serv., 235 N.J. Super. 22, 561 A.2d 618 (1989) 14,15

Binns v. Maddox, 57 Ala. App. 230, 327 So. 2d 726 (1976) 8

Board v. Board, 690 S.W. 2d 380 (Ky. 1985) 9

Bowden v. Bowden, 426 So. 2d 448 (Ala. Ct. App. 1983) 8

Bowen v. Gilliard, 483 U.S. 587 (1987) 1,3, 4,5,6,11,12

Britt, et al. v. Bowen, et al., No. 86-3076 (4th Cir. Sept. 1, 1987) 4

Brown v. McMahon, No. CIV.S-87-1581 (E.D. Cal. Oct. 11, 1989). . . . . 8,14, 15,2a passim.

Brumett v. Brumett, 472 N.E. 2d 616 (Ind. Ct. App. 1984) 9

Bureau of Alcohol, Tobacco and Firearms v. FRLA, 464 U.S. 89 (1983) 12

Cash v. Cash, 234 Ark. 603, 353 S.W.2d 348 (1962) 8

Chase v. Chase, 74 Was. 2d 253, 444 P.2d 145 (1968) 9

Children & Youth Services v. Chango, 341 Pa. Super. 512, 491 A.2d 1374 (1985) 9

Cohen v. Murphy, 368 Mass. 144, 330 N.E. 2d 473 (1975) 9

Craver v. Craver, 649 S.W. 2d 440 (Mo. 1983) 9

D'Antignac v. Perales, No. 16444-86 (N.Y. S.Ct. App. Div. May 9, 1988) 14

Davis v. Davis, 141 Vt. 398, 449 A.2d 947 (1982) 9

Davis v. Sallee, No. 4-86-27 (E.D. Tenn. October 10, 1986) 14

Folds v. Lebert, 420 So. 2d 715 (La. Ct. App. 1982) 9

Fowler v. Fowler, 156 Conn. 569, 244 A.2d 375 (1968) . . 9

Gibson v. Gibson, 110 Mich. App. 666, 313 N.W. 2d 179 (1981) 9

Griffin v. Avery, 120 N.H. 783, 424 A.2d 175 (1980) . . . 9

In Re Haynes, 343 N.W. 2d 679 (Minn. Ct. App. 1984) . . . 9

Jackson by Forrest v. Mullany, 708 F. Supp. 483 (N.D. N.Y. 1989) 14

Justice v. Scruggs, 286 S.C. 129, 332 S.E. 2d 106 (S.C. 1985) 9

King v. Smith, 392 U.S. 309 (1968) 2

Laison v. Laison, 219 Neb. 170, 332 N.W. 2d 591 (1985) 9

Lascaris v. Shirley, 420 U.S. 730 (1975) 10

Ledbetter v. Foster, 180 Ga. App. 696, 350 S.E. 2d 31 (1986) 14

Local 1976, United Brotherhood of C. & J. v. NLRB, 357 U.S. 93 (1958) 11

Lopez v. Lopez, 125 Ariz. 309, 609 P.2d 579 (Ct. App. 1980) 8

McBee v. Sallee, No. 2-86-103 (E.D. Tenn. Nov. 26, 1986) 14

Mask v. Mask, 95 N.M. 229, 620 P.2d 883 (1980). 9

Massinga v. Bowen, No. 87-3083 (4th Cir. Sept. 1, 1987) 4

Meek v.Meek, 669 P.2d 628 (Colo. Ct. App. 1983) 8

Moneyham v. Moneyham, 420 So. 2d 1072 (Miss. 1982) . . . 9

Nakaerts v. Nakaerts, 106 Ill. App. 3d 166, 435 N.E. 2d 791 (1982) 9

Nibs v. Nibs, 625 P.2d 1256 (Okla. 1981) 9

Passero v. Passero, 92 A.D. 2d 861, 459 N.Y.S. 2d 839 (1983) 9

Perteet v. Sumner, 246 Ga. 182, 269 S.E. 2d 453 (1980) . 8

Potter v. Potter, 169 N.J. Super. 140, 404 A.2d 352 (App. Div. 1979) 9

Potts v. Potts, 240 N.W. 2d 680 (Iowa 1976) 9

Reed v. Lukhard, 774 F.2d 1270 (4th Cir. 1985), rev. 481 U.S. 368 (1987) 1

Romero v. Romero, 101 N.M. 2d 345, 682 P.2d 201 (Ct. App. 1984) 9

Shea v. Vialpando, 416 U.S. 251 (1974) 1

Shulze v. Jensen, 191 Neb. 253, 214 N.W. 2d 591 (1974) 9

Todd v. Norman, 840 F.2d 608 (1988) 7,9, 14-15

U.S. v. Champlin Refining Co., 341 U.S. 290 (1951) 11

STATUTES

Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, Section 2640(a) and (c), 98 Stat. 494, 1146 2,3

42 U.S.C. Section 407(a) 5,14

42 U.S.C. Section 601 1

42 U.S.C. Section 602(a)(7)(A) 2

42 U.S.C. Section 602(a)(8)(A)(vi) 1,3,7

42 U.S.C. Section 602(a)(26) 2,10

42 U.S.C. Section 602(a)(38) 2

42 U.S.C. Section 606(a) 2

42 U.S.C. Section 651 2

42 U.S.C. Section 657(a)(1) 10

42 U.S.C. Section 657(b) 3

42 U.S.C. Section 662(b) 8

LEGISLATIVE HISTORY

"Background Material and Data on Programs Within the Jurisdiction of the Committees on Ways and Means," Ways and Means Comm. Pamph. 101-4, March 15, 1989 16

Senate Report, 1974 U.S. Code Cong. and Admin. News 8155, 93rd Cong., 2d Sess. 10

REGULATIONS

45 Fed. Reg. 35,590 (1984) 15

49 Fed. Reg. 35,599 (1984) 3

49 Fed. Reg. 35,605-606 (1984) 3

50 Fed. Reg. 34,693 (1985) 15

53 Fed. Reg. 21,642 (1988) 3,13

53 Fed. Reg. 21,644 (1988) 13

45 CFR 206.10(a)(1)(vii)(B) 3

45 CFR 232.11(a)(1)(i) 2

45 CFR 233.20(a)(2) 1

45 CFR 233.20(a)(3)(v)(B) 2,15

45 CFR 233.20(a)(3)(vi) 2

45 CFR 302.31(a)(3) 2,15

45 CFR 302.51(b)(1) 3

45 CFR 303.80(a) 2,14,15

CONSTITUTION

U.S. Constitution, Fifth Amend. 1,4,5,1a

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

In addition to the statutes and regulations cited in the Petition at 2, the Fifth Amendment to the United States Constitution, set forth in the Respondents' Appendix at 1a, is also involved.

STATEMENT OF THE CASE

The Secretary of Health and Human Services is seeking review of the Fourth Circuit's determination that his refusal to disregard as income the first $50 per month of Title II Social Security child benefits in determining eligibility and assistance levels under the AFDC program is not authorized by 42 U.S.C. Section 602(a)(8)(A)(vi). His statement of the case omits discussion of relevant aspects of the program, mischaracterizes the nature of the Respondents' action, overstates this Court's holding in Bowen v. Gilliard, 483 U.S. 587 (1987) and misrepresents the bases of the opinions of the courts below. Because of these inaccuracies and omissions, Respondents Elizabeth Stroop, et al., present this statement of the case.

The AFDC program is a joint federal-state public assistance program designed to provide financial assistance to needy and dependent children and to encourage and preserve a family environment, 42 U.S.C. Section 601, Reed v. Lukhard, 774 F.2d 1270, 1275 (4th Cir. 1985), rev. on other grounds, 481 U.S. 368 (1987), 107 S.Ct. 1807, 95 L.Ed.2d 328 (1987). States that choose to participate in the AFDC program must establish statewide "standards of assistance" which reflect the minimum dollar amount that, in the state's judgment, an AFDC family requires to meet its subsistence needs. Shea v. Vialpando, 416 U.S. 251, 253, (1974), 45 C.F.R. Section 233.20 (a)(2).

The AFDC program is not designed to provide support for all needy children but only for those children who are "dependent" within the meaning of 42 U.S.C. Section 606(a). See King v. Smith, 392 U.S. 309, 313 (1968). To meet the definition of "dependency" contained in that section, a child must, in addition to showing need, also establish that he or she is experiencing deprivation of parental support or care because one or both parents have died, is absent from the child's home, or is incapacitated. 42 U.S.C. Section 606(a). In determining whether a dependent child is also needy, the state must consider the available income and resources of the child and the custodial parent. 42 U.S.C. Section 602(a)(7)(A); 45 C.F.R. Section 233.20(a)(3)(vi).

When a child receives AFDC assistance, cooperation in the collection of legally owed child support is a condition of eligibility and the right to the child support must be assigned to the state. 42 U.S.C. Section 602(a)(26), 45 C.F.R. Section 232.11(a)(1)(i). A state agency acting pursuant to Title IV-D of the Social Security Act, 42 U.S.C. Section 651 et seq., administers the child support collection efforts. However, child support monies can be received directly by the family as well, see 45 C.F.R. Section 303.80(a), and states have the option of either collecting these direct payments from the recipients, often referred to as the "IV-D" option, or not collecting such payments but treating them as income in calculating the AFDC grant, called the "IV-A" option. Id. at Sections 233.20(a)(3)(v)(B), 302.31(a)(3) and 303.80.

Section 2640(a) of the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, 98 Stat. 494, amended the Social Security Act at 42 U.S.C. Section 602(a)(38) to provide that, except where inconsistent with the AFDC statute, the income of

a sibling of a needy child must be considered in determining the AFDC eligibility of that needy child. Section 2640(c) of DEFRA, 98 Stat. 1146, mitigated the effect of this amendment somewhat, see Bowen v. Gilliard, 483 U.S. 587, 107 S.Ct. 3008 at 3013, by providing that the first $50 of "any child support payments ... (including support payments collected and paid to the family under [42 U.S.C. Section 657(b)])" be disregarded in determining eligibility and benefit amount, 42 U.S.C. Section 602(a)(8)(A)(vi).

Regulations promulgated by the Secretary purporting to implement the "sibling deeming" provision require all siblings in the household to apply for AFDC benefits, including children who receive legally restricted Title II Social Security payments, even if they do not need or want AFDC, 49 Fed. Reg. 35,599 (1984), codified at 45 C.F.R. Section 206.10(a)(1)(vii)(B). The regulations implementing the disregard statute exempt the first $50 of only those support monies which are collected by a IV-D agency, 49 Fed. Reg. 35,605-35,606 (1984), codified at 45 C.F.R. Section 302.51(b)(1). Even spousal support payments are entitled to the disregard if they are collected by a state agency, 53 Fed. Reg. 21,642 (1988). No disregard is provided, however, for any support not collected by a IV-D agency, including Title II payments.

This case was filed as a class action by five Virginia families, each of which included children who received AFDC for support and other children who were independently supported by child support paid through Social Security or other sources. They sought to challenge the forcing of their independently supported children onto AFDC and the counting of income previously designated for the exclusive use of those children

as available to the entire family, which would result in the significant reduction or termination of AFDC benefits to the other family members.

On June 23, 1986 the district court entered a temporary restraining order, enjoining the implementation of the challenged rule in Virginia. With consent of all parties, the TRO was extended into a preliminary injunction on July 2, 1986. After cross-motions for summary judgment were filed on November 17, 1986, the district court stayed further proceedings pending the outcome of Britt, et al. v. Bowen, et al., No. 86-3076, consolidated with Massinga v. Bowen, No. 87-3083 in the Fourth Circuit. The Fourth Circuit had likewise stayed further proceedings in Britt and Massinga pending the outcome of Bowen v. Gilliard, supra, in this Court.

Contrary to the Petitioner's assertions, the Gilliard decision did not broadly validate the constitutionality of the "family income requirement." This Court merely held that with regard to children receiving court-ordered child support payments from their absent parents, the DEFRA amendments at issue here did not violate Fifth Amendment due process and equal protection principles nor the Fifth Amendment's taking clause. Not addressed in the decision were the statutory and constitutional claims of children independently supported by Title II Social Security benefits drawn from the earnings of deceased or disabled parents.

Accordingly, the Respondents voluntarily dismissed the claims both of the children receiving court-ordered support and of the non-custodial parents paying such support, but retained the claims of the Title II children that their inclusion in the AFDC assistance unit would constitute an involuntary diversion of their benefits to their needy siblings in violation of the

Anti-Alienation Provision of the Social Security Act, 42 U.S.C. Section 407(a), and that Act's provisions governing the fiduciary duties of representative payees. Respondents also continued to claim that if the inclusion of the Title II children were upheld notwithstanding these provisions, the Secretary's refusal to disregard the first $50 of their monthly benefits violated both the Social Security Act and the Fifth Amendment's guarantee of Equal Protection under the law. Respondents did not drop their challenge to the "family income requirement" as it related to Title II, or argue that Title II benefits were not "income" as the Petitioner suggests.

Following cross-motions for summary judgment, the district court held on December 21, 1987 that children receiving Title II benefits could be forcibly included in the AFDC assistance unit of their half-siblings, Petitioner's Appendix at 14a. The court ruled that such inclusion did not constitute an assignment or transfer of benefits or deprive the beneficiary of the use or control of such benefits and therefore did not violate the Anti-Alienation Provision. Id., citing cases from the Eighth, Ninth and Eleventh Circuits. The court also held, as did those Circuits, that use of Title II payments to benefit the entire family was analogous to Gilliard's approved use of a child's court-ordered support payments for the whole family's needs and therefore did not run afoul of the representative payee provisions of the Social Security Act. Id. at 18a-19a. However, the district court also held that when such Social Security benefits are counted in the AFDC eligibility determination, the same $50 disregard that is applied to other forms of child support applies to them as well. Id. at 19a-20a. The Secretary was found to be making "self-serving, irrational distinctions" in treating such benefits as child

support for the purpose of income inclusion but then, in implementing another part of the same statute, differentiating such benefits from child support so as to exclude them from the disregard. Id. at 20a.

On March 4, 1988, the district court denied the Secretary's motion to alter or amend the court's decision concerning the $50 disregard. Id. at 30a. In a memorandum opinion, the court rejected Petitioner's contention that the legislative history of a 1974 disregard provision, in effect for one year for the purpose of encouraging the then-new requirement that AFDC recipients cooperate with the state in the collection of child support payments, provided a rational justification for applying the present disregard to court-ordered child support, but not to Title II payments. Noting that the cooperation requirement had been in place for a decade by 1984 and that the legislative history of DEFRA contained no mention of any need to provide additional financial incentives, the court again found the distinctions offered by the Secretary to be irrational. Id. at 23a-27a.

The Secretary appealed from the district court's disregard determination on May 3, 1988 and Respondents cross-appealed on May 13, 1988 on the assistance unit ruling. The Fourth Circuit Court of Appeals affirmed on both issues in an opinion filed March 28, 1989. Id. at 1a-13a. The court announced it was joining the Eighth, Ninth and Eleventh Circuits in adapting this Court's analysis in Gilliard to the Title II inclusion issue and thereby rejecting Respondents' anti-alienation and representative payee arguments. Id. at 5a-8a. Finding that the disregard provision served to mitigate the effect of the filing unit provision, the court held that no rational basis existed for the Secretary's applying that mitigating effect to

recipients of court-ordered child support, but not to recipients of Title II child support. Id. at 8a-13a. Contrary to the Petitioner's assertions, the court decided the issue solely on the basis of statutory construction, but it did note in dictum that such disparate treatment also raised equal protection concerns. Id. at 11a, 12a.

On May 31, 1989, the Fourth Circuit denied the Secretary's petition for rehearing and suggestion for rehearing en banc.

ARGUMENT

The Secretary argues that the courts below have interpreted the disregard provision in a way that conflicts with the general statutory usage of the term "child support" and conflicts with the available legislative history. He maintains that appropriate deference was not given to his administrative interpretation. Alleging that this issue has significant fiscal implications and citing the Eighth Circuit's conflicting holding in Todd v. Norman, 840 F.2d 608 (1988), he argues that review and resolution by this Court is essential to the uniform administration of the AFDC program. None of these arguments has merit.

A. TITLE II PAYMENTS ARE SYNONYMOUS WITH THE TERM "CHILD SUPPORT" AS THAT TERM IS COMMONLY USED.

The disregard statute contains no definition of "child support." It provides simply that the first $50 per month of "any" child support is to be exempted, an indication that the term is to be construed very broadly. Support subject to the disregard "includes" (and therefore is not limited to) support collected and paid to the family by the state IV-D agency. 42 U.S.C. Section 602(a)(8)(A)(v). If Congress had wished to limit the types of child support eligible for treatment under this section, it could have easily done so. However, there is

no hint of such limitation either in the legislative history or in the statutory language itself.

The Secretary maintains that the term "child support" is consistently used throughout Title IV of the Social Security Act to refer only to payments from absent parents and he cites numerous sections to support this proposition. Petition at 10, n.6. Examination of these sections reveals, however, that the term "child support" has different meanings within different provisions of the complex statutory scheme of the Act. For instance, one of the cited sections, 42 U.S.C. Section 662(b), provides a definition of "child support" that makes that term "subject to and in accordance with state law." Obviously, such a definition could not be applied across the board, see discussion in Brown v. McMahon, No. CIV.S-87-1581 (E.D. Cal. October 11, 1989) at Respondent's Appendix 16a. Absent a definition in the disregard statute, it should be inferred that Congress intended to incorporate the accumulated, settled established meaning of the term.

An overwhelming number of state courts that have considered the nature of Social Security children's benefits have concluded that they are a form of insurance, earned by the worker and directly attributable to his participation in the work force. Once this characterization is accepted, the benefits are seen not as some gratuity but as a product of the parent's labor that should be credited against any support obligation. At least seventeen states credit such payments against the support obligation automatically.[1] At least

[1]ALABAMA: Binns v. Maddox, 57 Ala. App. 230, 327 So.2d 726 (1976) (disability); Bowden v. Bowden, 426 So.2d 448 (Ala. Ct. App. 1983) (death benefits). ARIZONA: Lopez v. Lopez, 125 Ariz. 309, 609 P.2d 579 (Ct. App. 1980) (retirement benefits). ARKANSAS: Cash v. Cash, 234 Ark. 603, 353 S.W.2d 348 (1962) (retirement benefits). COLORADO: Meek v. Meek, 669 P.2d 628 (Colo. Ct. App. 1983). GEORGIA: Perteet v. Sumner, 246 Ga.

another ten states allow discretionary credit against the obligation on a case-by-case basis -- not because these payments are not recognized as child support, but rather out of a concern that an automatic credit against a support obligation would constitute a modification of the support decree.[2] "Child support" as that term is commonly used clearly encompasses Title II payments.

B. THE LEGISLATIVE HISTORY OF THE 1974 DISREGARD PROVISION HAS NO RELEVANCE TO THE INTERPRETATION OF THE 1984 DEFRA STATUTE.

Both the Secretary and the Eighth Circuit in Todd v. Norman, supra, rely upon legislative history from previous and unrelated AFDC statutory changes to support their position that

182, 269 S.E.2d 453 (1980) (disability). IOWA: Potts v. Potts, 240 N.W.2d 680 (Iowa 1976). KANSAS: Andler v. Andler, 217 Kan. 539, 538 P.2d 649 (1975) (disability). KENTUCKY: Board v. Board, 690 S.W.2d 380 (Ky. 1985) (death benefits). LOUISIANA: Folds v. Lebert, 420 So. 2d 715 (La. Ct. App. 1982) (disability). MASSACHUSETTS: Cohen v. Murphy, 368 Mass. 144, 330 N.E.2d 473 (1975) (disability). MISSISSIPPI: Mooneyham v. Mooneyham, 420 So. 2d 1072 (Miss. 1982) (disability). NEBRASKA: Shulze v. Jensen, 191 Neb., 253, 214 N.W.2d 591 (1974) (disability). Lainson v. Lainson, 219 Neb. 170, 362 N.W.2d 53 (1985) (disability). NEW JERSEY: Potter v. Potter, 169 N.J. Super. 140, 404 A.2d 352 (App. Div. 1979). NEW MEXICO: Mask v. Mask, 95 N.M. 229, 620 P.2d 883 (1980) (retirement). Romero v. Romero, 101 N.M. 345, 682 P.2d 201 (Ct. App. 1984) (disability). PENNSYLVANIA: Children & Youth Servs. v. Chango, 341 Pa. Super. 512, 491 A.2d 1374 (1985) (disability). SOUTH CAROLINA: Justice v. Scruggs, 286 S.C. 129, 332 S.E.2d 106 (S.C. 1985) (disability). VERMONT: Davis v. Davis, 141 Vt. 398, 449 A.2d 947 (1982) (disability).

[2]CONNECTICUT: Fowler v. Fowler, 156 Conn. 569, 244 A.2d 375 (1968) (disability). ILLINOIS: Nakaerts v. Nakaerts, 106 Ill. App. 3d 166, 435 N.E.2d 791 (1982) (death benefits). INDIANA: Brummett v. Brummett, 472 N.E.2d 616 (Ind. Ct. App. 1984) (survivor's benefits). MICHIGAN: Gibson v. Gibson, 110 Mich. App. 666, 313 N.W.2d 179 (1981) (death benefits). MINNESOTA: In re Haynes, 343 N.W.2d 679 (Minn. Ct. App. 1984) (retirement benefits). MISSOURI: Craver v. Craver, 649 S.W.2d 440 (Mo. 1983) (in dicta). NEW HAMPSHIRE: Griffin v. Avery, 120 N.H. 783, 424 A.2d 175 (1980) (disability). NEW YORK: Passaro v. Passaro, 92 A.D.2d 861, 459 N.Y.S.2d 839 (1983) (disability). OKLAHOMA: Nibs v. Nibs, 625 P.2d 1256 (Okla. 1981) (disability). WASHINGTON: Chase v. Chase, 74 Wash. 2d 253, 444 P.2d 145 (1968) (disability).

the 1984 $50 disregard in DEFRA was not intended to apply to child support in the form of Social Security. This analysis is erroneous and contrary to basic principles of statutory construction.

The 1974 legislative change upon which the Secretary relies created, for the first time, the statutory obligation of AFDC applicants and recipients to assign support rights and cooperate with the agency in obtaining child support. 42 U.S.C. Section 602(a)(26)(D). Prior to this amendment, cooperation was not a condition of AFDC eligibility. Indeed, the 1974 statutory amendment actually resolved conflicting judicial rulings on this issue. See, Lascaris v. Shirley, 420 U.S. 730 (1975).

Along with the change, Congress adopted - as a temporary experiment - the limited pass-through of forty percent (40%) of the first $50 of support obtained. 42 U.S.C. Section 657(a)(1). According to the legislative history, this was done because:

> ...The Committee feels it may be desirable to offer the mother a financial incentive to cooperate. To demonstrate the possible effectiveness of the incentives, the Committee bill for the first year of the program provides that forty percent of the first fifty dollars a month in support collections for a family would be disregarded ...

1974 U.S. Code Cong. and Admin. News 8155 (emphasis added). The one-year time limit was actually incorporated in the statutory language. Apparently, the incentives did not prove effective because the disregard ended after the first year.

The Secretary concedes that the 1984 disregard was not explained in any of the 1984 legislative history, Petition at 12. But Congressional silence in 1984 in no way justifies looking back ten years to the purpose of unrelated legislation. "A determination under one statute should not be mechanically

carried over into the interpretation of another statute involving significantly different considerations and legislative purposes." Local 1976, United Brotherhood of C and J v. NLRB, 357 U.S. 93, 110 (1958).

The 1974 legislation was significantly different, because the 1974 disregard was created for a one-year limited period to support the then brand-new cooperation requirement. However, by 1984, the cooperation requirement was a long-standing condition of eligibility which was well-known by recipients. A mother who failed to cooperate knew that she would lose her AFDC. There was therefore no reason in 1984 to provide a financial incentive to cooperate.

Petitioner's reasoning also fails because it ignores circumstances contemporaneous to the 1984 amendment. A statute cannot be divorced from the circumstances existing at the time it was passed. U.S. v. Champlin Refining Company, 341 U.S., 290, 297 (1951). The 1984 disregard was attached to the new sibling deeming provision, and was included in the legislative history under the heading of "Parents and Siblings of Dependent Children Included in Filing Units." The only logical explanation for its inclusion in the 1984 amendment was to minimize the impact of considering the child support of independently supported children who under the new deeming provision were forced into the AFDC filing unit. In fact, that is precisely the conclusion reached by this Court in Gilliard:

> The burden of the [filing unit] change was mitigated somewhat by a separate amendment providing that the first fifty dollars of child support collected by the State must be remitted to the family and not counted as income for the purpose of determining its benefit level.

107 S. Ct. at 3013. This Court viewed the $50 disregard adopted in 1984 as being tied to the sibling deeming

provision. It had nothing to do with "incentives" to cooperate.

The financial hardship acknowledged in Gilliard will be no less for children supported through Social Security benefits than for those supported by child support in other forms. The plain language of the disregard statute entitles these children to the same mitigation of that hardship.

C. THE SECRETARY'S INTERPRETATIONS OF THE DISREGARD STATUTE ARE ARBITRARY, CONTRADICTORY AND IRRATIONAL AND ARE NOT ENTITLED TO DEFERENCE.

The general principle of deference to an agency's interpretation of the statute it is charged with administering should not obscure the quintessentially judicial function of determining what the statute means and what Congress intended. Chevron U.S.A. Inc. v. National Resources Defense Council, 467 U.S. 837, 843 n.9 (1984). As this Court has noted:

> ... the "deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress." American Shipbuilding Co. v. NLRB, 380 U.S. 300, 318, 13 L.Ed. 2d 855, 85 S.Ct. 955 (1965). Accordingly, while reviewing Courts should uphold reasonable and defensible constructions of an agency's enabling Act ... they must not "rubber stamp ... administrative decisions that they deem inconsistent with a statutory mandate or that frustrates the congressional policy underlying the statute." NLRB v. Brown, 380 U.S. 278, 291-292. 13 L.Ed. 2d 838, 85 S.Ct. 980 (1965).

Bureau of Alcohol, Tobacco and Firearms v. FRLA, 464 U.S. 89, 97 (1983).

The Secretary has applied his own definition of "child support" so erratically that his interpretation of the disregard provision is entitled to no deference from this Court. Id.; Adamo Wrecking Co. v. U.S., 434 U.S. 275, 287 n.5 (1978). For example, while insisting that "any child support"

be construed as narrowly as possible, he has responded to inquiries from two IV-D state agencies as to whether the $50 disregard should only be applied to court-ordered support this way:

> The $50 disregard applies to any support which has been assigned to the state pursuant to Section 402(a)(26) of the Act and is distributed under Section 457(b) of the Act, including voluntary support.

53 Fed. Reg. 21644 (1988). Expanding the definition beyond court-ordered support to voluntary support is hardly consistent with a narrow reading of the statute. If voluntary payments can be subject to the disregard, then why could not Title II payments received by an AFDC family in the absence of a support order be considered voluntary direct payments and be subject to the disregard when reported to the IV-A agency?

The Secretary went on to answer a state agency's question of whether spousal support is subject to the disregard this way:

> The $50 disregard payment applies to both child and spousal support. This conforms to Section 12 of Public Law 98-378 which requires state IV-D agencies to collect spousal support if a support obligation has been established with respect to the spouse and the IV-D agency is enforcing the child support order.

Id. at 21642 (June 9, 1988). This constitutes an incredibly broad view of what is child support. The Secretary in his answer seems to be more concerned with how a payment is collected than with the nature of the payment itself. Spousal support, of course, is not even designated as being for the child and benefits the child only indirectly. Yet, the Secretary insists that a Title II payment specifically earmarked for the child cannot be subject to the disregard without "stretching" the term child support beyond its generally accepted meaning! This interpretation is arbitrary, irrational and patently wrong.

D. THE DECISIONS OF ONE FEDERAL APPELLATE COURT AND ONE INTERMEDIATE STATE APPELLATE COURT WHICH ARE NOT CONSISTENT WITH THE FOURTH CIRCUIT DECISION AND ARE CLEARLY CONTRARY TO THE DEVELOPING CASE LAW DO NOT JUSTIFY GRANTING A WRIT.

Only two courts have held that Title II children's benefits are not entitled to the $50 disregard. Todd v. Norman, supra; Baylor v. New Jersey Dept. of Human Services, 235 N.J. Super. 22, 561 A.2d 618 (1989). These decisions do not create the kind of conflict which justifies this Court's review; the latter is based on an interpretation of New Jersey welfare statutes, while the former relies on a patently flawed analysis that has been rejected by every other court that has considered the issue.[3]

The Eighth Circuit in Todd relied in large part on the legislative history of the 1974 disregard which was shown to be inapplicable to the present provision, supra. That court also maintained that the disregard could not be applied because Title II benefits are not assignable. The syllogism the court constructed was as follows: AFDC recipients must assign their support rights to the state; the anti-alienation provision, 42 U.S.C. Section 407(a), provides that Title II benefits are not assignable; therefore, "child support payments" cannot be read to include Title II.

The analysis fails to take into account that child support monies can be received by the family directly as well as collected and dispensed by the state IV-D agency, see 45 C.F.R. Section 303.80. States have the option of either collecting these direct payments from the recipients (the "IV-D" option)

[3]Brown v. McMahon, supra; Jackson by Forrest v. Mullany, 708 F. Supp. 483 (N.D. N.Y. 1989); D'Antignac v. Perales, No. 16444-86 (N.Y. S.Ct. App. Div. May 9, 1988); McBee v. Sallee, No. 2-86-103 (E.D. Tenn. Nov. 26, 1986); Davis v. Sallee, No. 4-86-27 (E.D. Tenn. Oct. 10, 1986); accord Ledbetter v. Foster, 180 Ga. App. 696, 350 S.E. 2d 31 (1986).

or not collecting them but treating them as income in calculating the AFDC grant (the "IV-A" option). Id. at Sections 233.20(a)(3)(v)(B), 302.31(a)(3) and 303.80. In the preamble to regulations implementing the 1984 disregard, the Secretary noted that 45 C.F.R. Section 233.20(a)(4)(ii)(j) was being revised to clarify that in States using the "IV-A option, the fifty dollar disregard is to be applied in determining eligibility and grant amount." 45 Fed. Reg. 35,590 (1984). A year later, in the preamble to certain amendments to the "IV-A option" and "IV-D option" regulations made in light of the DEFRA disregard, HHS clearly stated that whether the money is budgeted as income under IV-A or recouped from the recipients under IV-D, "the individual who retains a direct payment is entitled to the first fifty dollars of the monthly support obligation." 50 Fed. Reg. 34,693 (1985). Child support payments therefore need not be "assignable" to come under the disregard provision. The analysis of the Todd court is simply wrong.

The New Jersey Superior Court in Baylor conceded that a state might apply the disregard to dependents' benefits if it chose to view them as child support. However, the court held that New Jersey does not do so either by statute or by its state plan and is not required to do so by the federal disregard statute. The reasoning of Baylor was idiosyncratic and should not have influence beyond its home state.

Every other court that has considered the matter has ruled consistent with the Fourth Circuit. The Eastern District of California has most recently taken up the issue, and in the McMahon decision, issued on October 11, 1989, has undertaken the most comprehensive analysis to date. That opinion is set forth in Respondents' Appendix beginning at 2a. It

demonstrates that the trend of the decisions is running strongly in the direction of applying the disregard to any child support, including Title II.

E. THE NEGLIGIBLE IMPACT THIS CASE WILL HAVE UPON THE COST AND ADMINISTRATION OF THE AFDC PROGRAM DOES NOT JUSTIFY THE GRANTING OF A WRIT.

Counting both state and federal dollars, the total actual benefit expenditure for the AFDC program during the 1986 fiscal year was just under $15.8 billion ($15,797,000,000). "Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means," Ways and Means Committee Pamph. 101-4, March 15, 1989, p. 556. The total number of families that received AFDC in 1986 has been estimated to be approximately 3.7 million. Id.

The Secretary estimates that in 1986, 73,000 AFDC families received Social Security benefits, and while he has no statistics differentiating the Title II children's benefits received from other forms of Social Security, he estimates that virtually all the families in this category were in fact receiving Title II. Petition at 18, n.17. Figuring that a $50 per month disregard would amount to $600 per year for each such family, he estimates the cost of the disregard for 73,000 families at $600 per year would be $43.8 million annually.

Accepting these figures and extrapolations as accurate, only an additional two per cent of the total number of AFDC families in 1986 would have qualified for the disregard if the Fourth Circuit's decision had been the law of the land at the time. The additional annual cost would have represented only 0.27 per cent of the program's benefit budget.

The Fourth Circuit thus affects an insignificant portion of

the AFDC program. The importance of the federal question involved is not such as to justify the granting of a writ.

CONCLUSION

Petitioner has raised no issues which would justify the granting of a Writ of Certiorari under Rule 17 of the Rules of this Court. This case involves an exceedingly minor issue of statutory interpretation affecting less than 2% of all AFDC families. It will have a negligible fiscal or administrative impact on the AFDC program. The one federal appellate court decision inconsistent with the Fourth Circuit is based on a patently flawed analysis and is clearly contrary to the strongly developing trend of the law. The Secretary's interpretation of the statute at issue is irrational in that it is inconsistent with his own regulatory scheme and contrary to the plain language of the section and is therefore entitled to no deference.

For these reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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AFFIDAVIT OF FILING AND SERVICE

STATE OF VIRGINIA
COUNTY OF CULPEPER, to-wit:

Jamie B. Aliperti, being first duly sworn, deposes and says:

1. I am counsel of record in this case for the Respondents, Elizabeth Stroop, et al., and a member of the Bar of this Court.

2. On November 1, 1989, pursuant to Supreme Court Rules 28.2 and 46.2, and within the time permitted for filing, I caused to be mailed, first class, postage prepaid, at the United States Post Office, Culpeper, Virginia 22701, addressed to The Honorable Joseph F. Spaniol, Clerk, Supreme Court of the United States, One First Street, N.E., Washington, D.C. 20543, the original of (a) the attached Brief in Opposition to Petition for Writ of Certiorari, and (b) Motion for Leave to Proceed in Forma Pauperis, with accompanying affidavits.

3. On November 1, 1989, pursuant to Supreme Court Rule 28.5, I also caused to be mailed, first class, postage prepaid, at the same Post Office, a copy of (a) the attached Brief in Opposition for Writ of Certiorari, and (b) Motion for Leave to Proceed in Forma Pauperis with accompanying affidavits, to each of the following persons:

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 1st day of November, 1989, at Culpeper, Virginia.

Jamie B. Aliperti

Jamie B. Aliperti

The foregoing instrument was subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid, on this 1st day of November, 1989, by Jamie B. Aliperti.

Notary Public

My commission expires: January 4, 1991.

RESPONDENTS' APPENDIX

U.S. Constitution, Fifth Amendment 1a

Brown v. McMahon, No. CIV.S-87-1581 (E.D. Cal. October 11, 1989) 2a

UNITED STATES CONSTITUTION

AMENDMENT V[1791].

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHERYL BROWN; JEANETTE HAMILTON, proceeding by and through her guardian ad litem, MARTHA LIEBISCH, individually, and on behalf of all similarly situated persons, Plaintiffs, v. LINDA McMAHON, Director, California Department of Social Services, Defendant and Third-Party Plaintiff, v. OTIS R. BOWEN, M.D., Secretary U.S. Department of Health and Human Services, Third-Party Defendant.	NO. CIV.S-87-1581 RAR MEMORANDUM OPINION

PROCEDURAL AND FACTUAL BACKGROUND

On November 9, 1987, plaintiffs, recipients of Aid to Families with Dependent Children (hereinafter "AFDC"), had cause to file the above-entitled action as a class action for declaratory and injunctive relief. In essence, the complaint challenges the California Department of Social Services policy with regard to its calculation of AFDC benefit levels. See 42 U.S.C. § 601-676 (1982 & Supp. V 1987). Specifically, the action raises the issue of whether under the Federal Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, 98 Stat. 494 (1984), tit. 2, social security benefits to children of disabled wage earners should be considered "child support" for purposes of applying the fifty dollar ($50.00) "disregard" provision, codified at 42 U.S.C. § 602(a)(8)(A)(vi).

The procedural history of this action is as follows: after the filing of the original complaint, defendant Linda McMahon, Director of the California Department of Social Services, filed a third-party complaint against Otis R. Bowen, M.D., then Secretary of the United States Department of Health and Human Services. A stipulation and order granting class certification was filed July 22, 1988. Thereafter, on July 29, 1988, plaintiffs filed a motion for summary judgment. On August 15, 1988, third-party defendant filed a cross-motion for summary judgment. Pursuant to those motions, the parties presented oral arguments to the court after which the case was taken under submission.

I

Overview of the AFDC Program

The AFDC program was established by Congress to provide aid to children who are needy because of a parent's death, absence or incapacity. 42 U.S.C. § 606(a). Participation by the states in the AFDC program is optional, but if a state elects to participate it must abide by federal law in the administration of its AFDC program. See Bowen v. Gilliard, 483 U.S. 587, 589 n. 1, 107 S.Ct. 3008, 3011 n. 1, 97 L.Ed.2d 485 (1987); Townsend v. Swank, 404 U.S. 282, 290-291, 92 S.Ct. 502, 507-08, 30 L.Ed.2d 448 (1971). The amount of assistance provided to families with dependent children, (otherwise known as "family units" or "assistance units"), is determined through a state standard of need. In this regard, federal law requires that participating states consider all income and resources available to the needy family unit before making the need determination. 42 U.S.C. § 602(a)(7). Thus, as a general rule, any income received by a family unit seeking AFDC benefits is taken into account and such income reduces dollar for dollar a family unit's benefit level. However, as described more fully infra, under the current law, portions of certain types of income are "disregarded" or not counted as family income when the state is making its need determination. 42 U.S.C. § 602(a)(8)(A).

Once the state makes its need determination, a benefit award is calculated and AFDC payments are made to the family

unit. In order to obtain benefit awards, AFDC applicants are required, inter alia, to assign to the state (1) all rights they have to collect child support payments and (2) all rights to other support payments from any other person including non-custodial parents. 42 U.S.C. § 602(a)(26)(A). The state then collects the child support payments from the non-custodial parent or other person obligated to support the AFDC applicant. See 42 U.S.C. § 651.

The Deficit Reduction Act of 1984 added three provisions to the AFDC program which affect the instant litigation. First, a "mandatory filing unit" provision requires that the income of all members of the assistance unit be included in calculating the total income of the assistance unit. 42 U.S.C. § 602(a)(38). Prior to the Deficit Reduction Act families seeking AFDC benefits could exclude from the assistance unit a family member receiving income (such as child support or social security benefits) whose income would reduce the total amount of the assistance unit's AFDC benefit award. The mandatory family unit requirement put an end to the practice of excluding family members with income in order to maximize family benefits and ensure that the income of all family members who live together and share expenses is recognized and counted as available to the family unit as a whole.

Secondly, the Deficit Reduction Act's "pass through" provision requires the state to pass through to the assistance unit the first $50.00 of support collected each month from non-

custodial parents (or other persons obligated to support the AFDC applicant) without decreasing the amount of the assistance unit's AFDC benefit award. 42 U.S.C. § 657(b)(1). The pass through provision provides in relevant part:

> The amounts collected as support by a State . . . shall . . . be distributed as follows:
> (1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month.

42 U.S.C. § 657(b)(1).

Finally the Deficit Reduction Act's "child support disregard" provision, specifically at issue in the instant action, provides that in making the need determination for an assistance unit, the state:

> shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title);...

42 U.S.C. § 602(a)(8)(A)(vi) (emphasis added).

The parenthetical reference to the "pass through" provision of 42 U.S.C. § 657(b) makes it clear that the words "any child support payments" are to include that child support collected by the state each month from non-custodial parents or

other persons obligated to support the AFDC applicant and passed through or paid to the assistance unit pursuant to § 657(b), as well as other types of child support. Thus, the legal issue before the court is whether those "other types" of child support payments include support payments received by a child in the form of social security child's insurance benefits under title II of the Social Security Act.[1]

Pursuant to title II of the Social Security Act, social security child's insurance benefits are paid to children whose parents are disabled, aged, or deceased wage earners. 42 U.S.C. § 402(d) (1982 & Supp. V 1987). Child's insurance benefits are attributable to the work effort of parent and are used exclusively for the support and maintenance of that parent-'s child or children. The AFDC program mandates that states treat a child's social security insurance benefits as income or resources of a member of the assistance unit when making the

[1] Although this issue is one of first impression in this circuit, courts in other circuits have come to opposite conclusions. A number of courts have held that the term "any child support payments" as used in 42 U.S.C. § 602(a)(8)(A)(vi) includes a child's title II social security insurance benefits. E.g., Carter v. Bowen, No. 86-0398-R (E.D. Va. March 4, 1988), aff'd sub nom., Stroop v. Bowen, 870 F.2d 969 (4th Cir. 1989) reh'g denied, May 31, 1989; Jackson by Forrest v. Mullany, 708 F. Supp. 483 (N.D. N.Y. 1989); Davis v. Sallee, No. 4-86-27 (E.D. Tenn. Oct. 10, 1986); McBee v. Sallee, No. 2-86-103 (E.D. Tenn. Nov. 26, 1986); D'Antignac v. Peralta, No. 16444-86 (N.Y. S.Ct. App. Div. May 9, 1988). By contrast, the Eighth Circuit has concluded that a child's title II social security insurance benefits are not "child support" within the meaning of § 602(a)(8)(A)(vi). Todd v. Reagan, No. 85-300-A (S.D. Iowa Dec. 22, 1986), aff'd sub nom., Todd v. Norman, 840 F.2d 608 (8th Cir. 1988), reh'g en banc denied, May 20, 1988; Accord Baylos v. New Jersey Dep't of Human Servs., 235 N.J. Super. 22, 561 A.2d 618 (1989).

need determination for AFDC purposes. 42 U.S.C. § 602(a)(7)(A). However, assignment to the state or other transfer of social security benefits paid under title II is expressly prohibited. 42 U.S.C. § 407(a) (Supp. V 1987).

The Secretary has never specifically defined the terms "child support payments" within the meaning of the child support disregard provision, § 602(a)(8)(A)(vi). However, the regulations implementing the provisions of the DEFRA, published on September 10, 1984, 49 Fed. Reg. 35,586, 35,604 (see 45 C.F.R. §§ 232.20(a), 302.51(b)(1) (1988)), lend support to the Secretary's present litigation posture that § 602(a)(8)(A)(vi) mandates a $50.00 disregard only in circumstances where child support payments have been assigned to the state and are considered "collected" by the state under § 657(b).[2]

[2] The summary of the interim final regulations implementing changes in the AFDC program mandated by the DEFRA provides, inter alia, that the DEFRA:

> Requires States to disregard the first $50 per month of the current monthly support obligation of any child support collected on the family's behalf or received directly by the family in determining AFDC eligibility and payment amounts.

49 Fed. Reg. 35,586 (1984)(emphasis added). Specifically, the interim final regulations, 49 Fed. Reg. 35,599 (1984), amended 45 C.F.R. § 232.20(a) to provide as follows:

> § 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.
> (a) Definition. For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly

The State of California, in accordance with these federal regulations and the Secretary's interpretation of § 602(a)(8)(A)(vi), does not consider social security child's insurance benefits to be "child support payments" within the meaning of the child support disregard provision. Consequently, the state does not disregard the first $50.00 of child support

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> collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 302.51(b)(1).

45 C.F.R. § 232.20(a) (1988)(emphasis added). The interim final regulations, 49 Fed. Reg. 35,604-05 (1984) also amended 45 C.F.R. § 302.51(b)(1) (1988) to implement DEFRA's pass through provision, 42 U.S.C. § 657(b)(1). The amended regulation provides in relevant part:

> § 302.51 Distribution of support collections.
>
> The State plan shall provide as follows:
>
> (b) The amounts collected as support by the IV-D agency pursuant to the State plan for children and the parents of such children who are current recipients of aid under the State's title VI-A plan and for whom an assignment under 232.11 of this title is effective shall be distributed as follows:
>
> (1) Of any amount that is collected in a month which represents payment of the required support obligation for that month, the first $50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section.

45 C.F.R. § 302.51(b)(1) (1988)(emphasis added).

payments in making the need determination for an assistance unit when the source of the support payments are title II social security child's insurance benefits.

As previously indicated, plaintiffs bring this action to challenge the Secretary's interpretation of § 602(a)(8)(A)(vi), the child support disregard provision. Plaintiffs contend that the words "any child support payments" include support payments received by a child in the form of child's insurance benefits pursuant to title II of the Social Security Act.

DISCUSSION

II

The Statutory Language

In interpreting the meaning of the DEFRA's child support disregard provision, 42 U.S.C. § 602 (a)(8)(A)(vi), the court first attempts to determine congressional intent, employing traditional tools of statutory construction. N.L.R.B. v. United Food & Com'l Wkrs. Union, 484 U.S. 112, 108 S.Ct. 413, 421, 98 L.Ed.2d 429 (1987); see also I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987). If congressional intent can be determined, that intention is the law and the Secretary's regulations implementing the provision at issue must be fully consistent with and give effect to the legislative will. Id.; see Fernandez v. Brock, 840 F.2d 622, 631 (9th Cir. 1988). If however, upon review of the statute's language, structure and legislative history, Congress' intent

cannot be determined, courts will defer to the administrative agency's interpretation so long as the interpretation is rational and consistent with the statute. N.L.R.B. v. United Food & Com'l Wkrs. Union, 484 U.S. 112, 108 S.Ct. at 421; Smith v. Heckler, 820 F.2d 1093, 1094 (9th Cir. 1987). See also Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984).

The starting point in determining Congress' intent is the plain meaning of the language of the statute itself. See Fleming v. Dept. of Public Safety, 837 F.2d 401, 405-406 (9th Cir. 1988), cert. denied, __ U.S. __, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988). If the statutory language is unambiguous, that language is regarded as conclusive absent a clearly expressed legislative intention to the contrary. See I.N.S. v. Cardoza-Fonseca, 480 U.S. at 432 n. 12, 107 S.Ct. at 1213 n. 12.

The language at issue here are the words "any child support payments . . . (including support payments collected and paid to the family under section 657(b) of this title)." 42 U.S.C. § 602(a)(8)(A)(vi). Unfortunately, Congress has failed to explicitly define the term "child support payments" within the meaning of the child support disregard provision, § 602(a)(8)(A)(vi).[3] The Secretary contends that the $50.00 dis-

[3] Plaintiffs urge the court to apply California law to determine what constitutes "child support". However, both parties agree that the term "child support" is defined in a variety of ways in the various states. Thus, utilizing state law to define the term "child support" would give the Social

regard applies only to those "child support payments" assigned to and collected by the state and paid to the family under § 657(b). However, a perusal of the statutory language reveals that the Secretary's interpretation of § 602(a)(8)(A)(vi) is patently inconsistent with the intent of Congress as reflected in the plain meaning of the statute's language.

First, the plain language of § 602(a)(8)(A)(vi) mandating that states disregard the first $50.00 of "any child support payments" does not distinguish between classes of child support payments that trigger the disregard. See Turner v. McMahon, 830 F.2d 1003, 1007 (9th Cir. 1987). In construing statutes, courts must give effect to the subtleties of language that Congress chose to employ, particularly where Congress has isolated sections for special consideration by way of amendment. Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 222, 106 S.Ct. 2485, 2494, 91 L.Ed.2d 174 (1986). Further, well established edicts of statutory construction require that courts reject interpretations that fail to give effect to all of the words used by Congress. E.g., Central Montana Electric Power

Security Act a varied and possibly inconsistent meaning nationwide. When construing a federal statute, the courts must strive for an interpretation that will result in consistent application nationwide. Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 119-120, 103 S.Ct. 986, 995-96, 74 L. Ed. 2d 845 (1983), reh'g denied, 461 U.S. 911 (1983). Further, courts assume that in the absence of plain indications to the contrary, when Congress enacts a statute, it does not intend to make its application dependent upon state law. 460 U.S. at 119, 103 S.Ct. at 995. Thus, the court declines to apply state law to determine the meaning of the words "any child support payments" under 42 U.S.C. § 602(a)(8)(A)(vi). Accord Todd v. Norman, 840 F.2d 608, 611 (8th Cir. 1988).

Co-op., v. Adm'r of Bonneville Power, 840 F.2d 1472, 1478 (9th Cir. 1988). Thus, the word "any" when referring to "child support payments" in § 602(a)(8)(A)(vi) significantly broadens the scope of the statute and indicates the congressional intent to include all forms of child support received by the AFDC family for the use and benefit of the dependent child.

Furthermore, contrary to the Secretary's position, the language of the statute clearly indicates that the $50.00 disregard is not limited to support payments collected and paid to the family under § 657(b), but includes other types of support payments as well. The language of the child support disregard provision mandates that states "shall disregard the first $50 of any child support payments . . . (including support payments collected and paid to the family under section 657(b) of this title)." 42 U.S.C. § 602(a)(8)(A)(vi) (emphasis added). The ordinary meaning of the parenthetical language of § 602(a)(8)(A)(vi) makes it obvious that the words "any child support payments" are to include not only support payments collected and paid to the family under § 657(b), but other types of child support as well. The ordinary and obvious meaning of a phrase is not to be lightly discounted and courts must assume that the legislative purpose is expressed by the ordinary meaning of the words used. I.N.S. v. Cardoza-Fonseca, 480 U.S. at 431, 107 S.Ct. at 1213.

Ignoring the parenthetical language, the Secretary contends that the $50.00 disregard applies only to those support

payments assigned to and collected by the state and paid to the family under § 657(b).[4] Explaining this interpretation, the Secretary merely states that the child support disregard provision, § 602(a)(8)(A)(vi), and the pass through provision, § 657(b), are co-extensive statutes which are "inextricably intertwined". In essence, the Secretary views the provisions as two sides of the same coin: the "pass through" of a $50.00 support payment collected and paid to the AFDC family under § 657(b) being the only circumstance permitting a "disregard". The Secretary's contention that the two statutes are merely co-extensive is belied by the plain meaning of the parenthetical

[4] The Eighth Circuit in Todd v. Norman, 840 F.2d 608 (8th Cir. 1988) facing the same issue, agreed with the Secretary's position that only those child support payments assigned to and collected by the state trigger the $50.00 child support disregard provision. In attempting to explain the parenthetical language of 42 U.S.C. § 602(A)(8)(a)(vi), the Todd court points to 45 C.F.R. §§ 233.20(a)(3)(v), 302.31(a)(3) and 303.80 (1988). These regulations guide the states in their treatment of child support payments which are made directly to the family unit despite assignment to the state, or are made before the assignment becomes effective. The regulations establish alternate procedures whereby the state can collect child support paid directly to the family unit. The Todd court reasoned that because these regulations "show that the state can collect child support payments outside of 42 U.S.C. § 657(b), [they] thus provide a ready explanation for the parenthetical language" in 42 U.S.C. § 602(a)(8)(A)(vi). Todd, 840 F.2d at 613.

However, the Todd court fails to explain why it considers such direct payment collections to be "outside" of 42 U.S.C. § 657(b). Section 657(b) merely refers to the amounts "collected as support by a State pursuant to a plan approved under this part . . . ." Thus, these regulations may not provide a ready explanation for the parenthetical language, as the Todd court suggests. Moreover, even assuming such collections are considered to be "outside" of section 657(b), the improbability that Congress envisioned these two highly specific regulations to be the "other types of child support outside of 42 U.S.C. § 657(b)" makes the argument untenable.

language in § 602(a)(8)(A)(vi). Section 602(a)(8)(A)(vi) is obviously broader than § 657(b) as it "includes" support payments collected by the state and paid to the family unit under § 657(b), and is therefore not limited to those support payments. Because the Secretary's narrow reading of § 602(a)(8)(A)(vi) and § 657(b) is patently inconsistent with a plain reading of the statute's language, judicial deference to that interpretation is unwarranted. See I.N.S. v. Cardoza-Fonseca, 480 U.S. at 432 n.12, 446-48, 107 S.Ct. at 1213 (no deference to agency's interpretation because plain statutory language settles the question); Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. at 842-843, 104 S.Ct. at 2781-82 (no deference to administrative interpretations manifestly contrary to the statute); Smith v. Heckler, 820 F.2d at 1094 (court will not rubber stamp agency's construction of a statute inconsistent with statutory mandate).

Notwithstanding the statutory language to the contrary, the Secretary argues that his reading of the term "any child support payments" to include only support payments collected and paid to the AFDC family under § 657(b) must withstand plaintiffs' challenge because it is consistent with and harmonizes related sections of the Social Security Act. Those sections mandate on the one hand that all "child support payments" be assigned to the state, 42 U.S.C. § 602(a)(26)(A), and on the other hand that a child's insurance benefits cannot be

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assigned to a third party, such as the state, 42 U.S.C. § 407(a).

The Secretary's argument in this regard is only forceful if one assumes that the term "child support" has the same meaning each time the term appears in the Social Security Act. The term "child support", however, has different meanings within different provisions of the Social Security Act's complex statutory scheme. For example, 42 U.S.C. § 662(b) explicitly provides a definition of the term "child support" which, inter alia, makes the term "subject to and in accordance with State law". Since the Secretary is unwilling to accept this definition of the term "child support" throughout the Social Security Act, he must concede that the term "child support" has different meanings within different sections of the Act. The Ninth Circuit has long recognized that a term used in different sections of a complex statute does not necessarily carry the same meaning in each context. See e.g., Kennecott Copper Corp. v. Train, 526 F.2d 1149, 1154 n. 20 (9th Cir. 1975), cert. denied, 425 U.S. 935 (1976); U.S. v. Stauffer Chemical Co., 684 F.2d 1174, 1185 (6th Cir. 1982), aff'd, 464 U.S. 165, 104 S.Ct. 575, 78 L.Ed.2d 388 (1984).

The above examination of the statutory language thus leads inexorably to the conclusion that, contrary to the Secretary's construction, Congress intended the child support disregard provision, § 602(a)(8)(A)(vi), to apply not only to support payments collected and paid to the family unit under

§657(b) but other types of child support as well. Unfortunately, the statutory language stops short of revealing whether Congress intended these "other types" of child support to include support payments received by a child in the form of a child's title II social security insurance benefits.

III

Legislative History of the
Child Support Disregard Provision

Since the language of § 602(a)(8)(A)(vi) leaves open the question of what types of "child support payments" (other than support payments collected by the state and paid to the family under § 657(b)) are to be included in the operation of the DEFRA's child support disregard provision, the court turns to the statute's legislative history to glean the underlying congressional intent. Unfortunately, the statutory language at issue in the present action was added during the final conference negotiations concerning the DEFRA and there is no legislative history detailing precisely what Congress intended by the language finally adopted.

Notwithstanding the lack of explicit legislative history on point, the parties look to the legislative context surrounding the enactment of the DEFRA's child support disregard provision and the legislative history of a related statute passed by Congress in 1974 as evidence of the congressional intent underlying § 602(a)(8)(A)(vi).

The Secretary argues that the legislative history of a 1974 "pass through" provision, 42 U.S.C. § 657(a)(1) (1974), (predecessor to the DEFRA's current pass through provision, 42 U.S.C. § 657(b)(4)), is relevant to discerning Congress' intent in passing the DEFRA's child support disregard provision, 42 U.S.C. § 602(a)(8)(A)(vi).[5] Specifically, the Secretary contends that Congress had the same purpose in enacting the DEFRA's child support disregard provision as it had in passing the 1974 pass through provision, i.e., to provide an incentive for families receiving AFDC benefits to collect child support payments from non-custodial working parents. Thus, the Secretary seeks to employ the legislative history underlying the 1974 pass through provision to explain Congress' intent in passing the 1984 DEFRA's child support disregard provision.

This transfer of congressional intent provides the sole support for the Secretary's position that DEFRA's child

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[5] The purpose of the 1974 "pass through" was to provide a greater financial incentive to AFDC recipients to cooperate in the collection of child support payments from the child's non-custodial parent. See S. Rep. No. 1356, 93rd Cong., 2d Sess. 23, reprinted in 1974 U.S. Code Cong. & Admin. News 8133, 8155. In furtherance of this goal, Congress enacted the earlier pass through provision which provided that 40% of the first $50.00 collected on the monthly support obligation of non-custodial parents would be passed through to the family without affecting their AFDC eligibility. 42 U.S.C. § 647(a)(1) (1974). AFDC family units were thus encouraged to cooperate with the state in collecting child support from an absent working parent because for each month that such support was actually collected the AFDC family received income in addition to their AFDC benefit award. The 1984 DEFRA's pass through provision is quite similar in that it provides that the first $50.00 collected on the monthly support obligation of non-custodial working parents shall be passed through to the AFDC family without affecting their AFDC eligibility. 42 U.S.C. § 657(b)(1).

support disregard applies only to families where the absent parent is able to work and thus make child support payments directly, and not to families where the absent parent is unable to work and the child support payments are made indirectly through a child's social security insurance benefits. The rationale for the Secretary's distinction is that families who receive child support from the absent parent indirectly, in the form of a child's social security insurance, need no incentive to collect support payments from the absent parent, as those payments are made directly by the government.

Plaintiffs, on the other hand, contend that the 1984 Congress was not concerned with creating incentives for collecting child support. Rather, Congress' purpose in enacting the DEFRA's child support disregard provision was to mitigate the harsh effects of the DEFRA's mandatory filing unit provision. Under this view, the Secretary's distinction between families that receive support payments directly from an absent working parent and families that receive support payments indirectly, from an absent parent who is unable to work via child's social security insurance benefits, is wholly insupportable. Both families are equally subject to the harsh effects of the DEFRA's mandatory filing unit provision and should be equally entitled to the benefits of the $50.00 child support disregard.

Upon careful consideration of the well-drafted arguments by both counsel, the court is unpersuaded that Congress' intent in passing the 1974 pass through provision should be

"transferred" to the 1984 passing of DEFRA's child support disregard provision. The legislative context in which the current disregard provision was passed and the available case law lead inescapably to the conclusion that Congress' purpose in passing the child support disregard provision was not, as the Secretary suggests, to provide incentives for collecting child support from non-custodial working parents. Rather, for the following reasons, the court concludes that Congress intended the DEFRA's child support disregard provision to mitigate the burden that the Act's mandatory filing unit provision was to have on AFDC families.

The court is unpersuaded that a transfer of congressional intent is warranted for several reasons. First, it is improper to infer the intent of the 1984 Congress from the views of an earlier Congress. It is the intent of the Congress which enacted the legislation that controls. Oscar Mayer & Co. v. Evans, 441 U.S. 750, 758, 99 S.Ct. 2066, 2072, 60 L.Ed.2d 609 (1979); see also United States v. Price, 361 U.S. 304, 313, 80 S.Ct. 326, 332, 4 L.Ed.2d 334 (1960); Conference of State Bank Supervisors v. Conover, 710 F.2d 878, 884 (D.C. Cir. 1983).

Second, even assuming congressional intent could properly be transferred from one Congress to another, the DEFRA's child support disregard provision has no correlate in the 1974 legislation. Although the current language of 42 U.S.C. § 657(b), the DEFRA's pass through provision, and the prior language of 42 U.S.C. § 657(a)(1) (1974) each provide for

a "pass through", the issue before this court is not the meaning of the pass through provision, but rather, the meaning of the child support disregard provision. In arguing that Congress' intent underlying the 1974 pass through should be used to explain the DEFRA's child support disregard, the Secretary mistakenly assumes that the DEFRA's pass through provision and the DEFRA's child support disregard provision are one and the same. The court has previously rejected the Secretary's argument that these two provision are merely opposite sides of the same coin. Rather, the court reads these two separate provisions exactly as Congress wrote them: two separate and distinct statutory provisions, the disregard provision being broader in scope as it includes payments made pursuant to the pass through provision.

Third, a review of the Social Security Act's history reveals that in 1974 Congress' purpose in amending that Act was probably not the same as in 1984 when Congress passed the DEFRA amendments. When Congress enacted the 1974 amendments, the legal landscape to be amended was quite different in that the Social Security Act's statutory scheme at that time contained no incentives to ensure that child support payments were collected from non-custodial parents. The 1974 amendments created at least two means of improving parental support of AFDC family units: the earlier pass through provision, 42 U.S.C. § 647(a)(1) (1974), and mandatory assignment and cooperation provisions which required all AFDC recipients to assign to the state any

support rights they had in their own behalf or on behalf of their dependents who were AFDC recipients. Social Services Amendments of 1974, Pub. L. No. 93-647, §§ 101(a)-(c), 88 Stat. 2337 (1974), reprinted in 1974 U.S. Code Cong. and Admin. News 2716, 2732-44. By the end of 1975, the pass through provision was phased out, and the mandatory assignment and cooperation provisions remained. Thus, unlike the statutory scheme to be amended in 1974, when Congress enacted the DEFRA amendments in 1984 the Social Security Act included assignment and cooperation requirements which had been in place for a decade to ensure that child support payments were collected.

Finally, evidence supporting the view that in passing the 1984 DEFRA's child support disregard provision Congress was not concerned with creating incentives for collecting child support is found by viewing DEFRA in the context of other legislation pending before Congress at the time. One month after enacting the DEFRA, Congress passed a separate statute which addressed a whole range of issues regarding child support enforcement. See The Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 2397-78. The proposition that Congress inserted a child support "incentive" provision in the DEFRA, a bill with no other child support enforcement issues, while at the same time considering a comprehensive revision of the child support enforcement structure is simply unreasonable.

For all these reasons, the court rejects the Secretary's argument that Congress' intent in 1974, focused as it was on creating incentives for absent parents to make child support payments, should be transferred to the Congress that enacted the 1984 DEFRA's child support disregard provision. The Secretary's assumption that in passing the child support disregard provision in 1984, Congress had the same intent it had in passing the 1974 pass through provision is wholly without support.

By contrast, there is forceful evidence in the context in which the DEFRA's child support disregard provision was enacted to support the view that Congress intended the disregard provision to mitigate the effects that the Act's mandatory filing unit provision was to have on AFDC recipients. The child support disregard provision emerged from the Conference Committee that developed the final version of the Deficit Reduction Act of 1984. Neither the Senate nor the House bill contained any disregard provision. The Senate's proposed version of the DEFRA contained a mandatory filing unit provision which, as discussed supra, required previously excluded children to be counted as members of the assistance unit. The House bill did not contain a mandatory filing unit provision. In conference, the House acceded to the Senate's version of the DEFRA, but the section that authorized the mandatory filing unit was expanded to provide for the child support disregard provision and the pass through provision. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. (1984), reprinted in 1984 U.S. Code Cong. &

Admin. News 2095. Thus, the context in which the child support disregard provision was enacted strongly suggests that Congress' purpose in passing that provision was to mitigate the harsh effects that the mandatory filing unit provision was to have on AFDC recipients.

The view that Congress intended § 602(a)(8)(A)(vi) to mitigate the effects of the mandatory filing unit provision is also supported by the Supreme Court in Bowen v. Gilliard, 483 U.S. 587, 107 S.Ct. 3008, 97 L.Ed.2d 485 (1987) wherein the Court made an explicit pronouncement regarding the purpose of the child support disregard provision. In upholding the constitutionality of the DEFRA's mandatory filing unit provision, the Supreme Court stated:

> Because the 1984 amendments forced families to include in the filing unit children for whom support payments were being received, the practical effect was that many families' total income was reduced. The burden of the change was mitigated somewhat by a separate amendment providing that the first $50 of child support collected by the state must be remitted to the family and not counted as income for the purpose of determining its benefit level. See 42 U.S.C. § 602(a)(8)(A)(vi) (1982 ed., Supp. III); 42 U.S.C. § 657(b)(1) (1982 ed., Supp. III).

Bowen v. Gilliard, 483 U.S. at 594, 107 S.Ct. at 3013 (emphasis added).

The Supreme Court has thus recognized, albeit in dicta, that the purpose of the DEFRA's child support disregard provision was to mitigate the harsh effects of the Act's mandatory filing unit provision.[6] In light of the context in which § 602(a)(8)(A)(vi) was passed and the Supreme Court's explicit pronouncement in Bowen v. Gilliard, 483 U.S. at 594, 107 S.Ct. at 3013, and because the Secretary's position is wholly without support, the court concludes that Congress intended § 602(a)(8)(A)(vi) to serve as a mitigating force to the DEFRA's mandatory filing unit provision.

In light of the court's conclusion that Congress enacted the DEFRA's child support disregard provision as a means of mitigating the burdens imposed by the Act's mandatory filing unit provision, the Secretary's self-serving interpretation of the phrase "any child support payments" as excluding support payments made by an absent parent in the form of a child's social security insurance benefits is both irrational and patently inconsistent with congressional intent. Certainly, the

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[6] The court recognizes that the language quoted from Bowen may also be read to support the Secretary's position that only child support payments "collected by the state" trigger the $50.00 disregard. However, such a reading would be in conflict with the plain meaning of the statutory language which, as discussed supra, "includes" and is therefore not limited to payments collected by the state. Moreover, such a reading requires an inference that the Supreme Court intended to make a specific statement regarding the scope of the $50.00 disregard provision. Since that issue was not before the Court, it is more likely that the quoted language is a general statement intended merely to indicate the purpose underlying the $50.00 disregard and pass through provisions as mitigating the burden imposed on AFDC recipients by the mandatory filing unit provision.

burdens imposed by the DEFRA's mandatory filing unit provision fall equally onto AFDC families where the absent parent is working and families where the absent parent is unable to work and supports the child through social security benefits that the parent earned while working. Likewise, the benefits of the $50.00 disregard must enure equally to the two classes of AFDC families. Because the Secretary's narrow reading of the statute is irrational and inconsistent with congressional intent, judicial deference to that interpretation is unwarranted. See N.L.R.B. v. United Food & Com'l Wkrs. Union, 484 U.S. 112, 108 S.Ct. at 421; Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. at 844, 104 S.Ct. at 2781-82; Smith v. Heckler, 820 F.2d at 1094.

The Secretary's final argument is that his interpretation of the term "any child support payments" should be upheld because plaintiffs' reading of the term to include child's social security insurance benefits would be at cross-purposes with the budget reduction goal of the Deficit Reduction Act. Although the Act's name implies otherwise, the Deficit Reduction Act contains a mixture of provisions only some of which serve to reduce government expenditures. In construing a statute, courts must avoid the simplistic assumption that whatever furthers the broad purposes of a statute must be the law. See Rodrigues v. United States, 480 U.S. 522, 525-26, 107 S.Ct. 1391, 1393, 94 L.Ed.2d 533 (1987). "[N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be

sacrificed to the achievement of a particular objective is the very essence of legislative choice -- and it frustrates rather than effectuates legislative intent to assume that whatever furthers the statute's primary objective must be the law." Id. (emphasis in original). Accordingly, the court is unwilling to assume that the government's otherwise insupportable rationale for counting a child's social security benefits as "income" to the family unit, but refusing to recognize such payments as child support for purposes of the child support disregard provision, should be upheld merely because that interpretation serves the budget reduction allegedly envisioned in the Deficit Reduction Act.

The court concludes that the Secretary's refusal to recognize a child's social security benefit payments as child support within the meaning of § 602(a)(8)(A)(vi) is inconsistent with both the plain meaning of the statutory language and the congressional intent underlying the statute. Congress intended the disregard for "any child support payments" to include support payments made by or for an absent parent for the use and benefit of the dependent child regardless of whether the payments come directly from the working non-custodial parent or indirectly through social security insurance benefits that parent earned while working.

For the foregoing reasons and good cause appearing therefor,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that third-party defendant's cross-motion for summary judgment is DENIED.

IT IS SO ORDERED.

DATED: October 11, 1989.

RAUL A. RAMIREZ, JUDGE
UNITED STATES DISTRICT COURT